

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
WILLIAM G. BURLESON,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 81-72

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of two \$250 civil penalties for outdoor burning allegedly in violation of Regulation I of the Puget Sound Air Pollution Control Authority (PSAPCA) Article 8, Section 8.02 and 8.05 came on for hearing before the Pollution Control Hearings Board at Tacoma, Washington on September 3, 1981. William A. Harrison, an administrative law judge, presided. Members Nat W. Washington and Gayle Rothrock served for and as the Board.

Appellant appeared and represented himself. Respondent appeared through its attorney, Keith D. McGoffin. Court reporter Kim Otis

1 recorded the proceedings. Respondent elected a formal hearing  
2 pursuant to RCW 43.21B.230.

3 Witnesses were sworn and testified, exhibits were examined and  
4 arguments were heard. From what was heard and examined the Pollution  
5 Control Hearings Board makes these

#### 6 FINDINGS OF FACT

##### 7 I

8 Respondent has filed with this Board a certified copy of its  
9 Regulation I, of which we take official notice. It contains  
10 respondent's regulations and amendments thereto, pursuant to RCW  
11 43.21B.

##### 12 II

13 On March 2, 1981, the appellant caused or allowed an outdoor fire  
14 to be ignited on his residential and farm property near Kent,  
15 Washington in King County Fire District No. 37, without benefit of a  
16 fire permit. The fire was supposed to dispose of materials from  
17 cleared land and some wooden chicken cages no longer needed in the  
18 appellant's poultry farming operation. The fire was ignited in the  
19 late afternoon by an occasional employee of appellant. The employee  
20 ignited the fire without appellant's knowledge under the mistaken  
21 belief that appellant had already obtained a fire permit.

##### 22 III

23 The fire measured up to 20 feet by 30 feet at the base and 7 feet  
24 high at the piled-up peak. It contained stumps, limbs, branches and  
25 other vegetation. Up to 10% of the contents were chicken cages, scrap

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

1 lumber, six empty oil cans, chicken feathers, pieces of metal from  
2 feeding troughs, an old chair, and a container described as a  
3 50-gallon drum, which constitute prohibited materials for an open land  
4 clearing burn.

#### 5 IV

6 Shortly after the brush pile was ignited, someone reported the  
7 fire to the Kent Fire Department, the contract service provider for  
8 Fire District No. 37. Kent Fire Department personnel came to the  
9 site, talked with the man who ignited the fire, ascertained there was  
10 no valid fire permit, talked with the property owner, and indicated  
11 the firefighters and equipment were ready to extinguish the fire. Out  
12 of apparent skepticism about municipal firefighting methods,  
13 appellant, Burleson, prevented firefighters from entering his  
14 property. After the spectre of sheriff deputies' presence was raised  
15 by Kent firefighters, appellant permitted entrance to his property and  
16 extinguishment of the sizeable fire with 500 gallons of water from a  
17 fire engine and 1250 gallons of water from a tanker.

#### 18 V

19 Kent firefighters contacted PSAPCA, whose area inspector went to  
20 the fire station and later, the residence at the fire site. Finding  
21 no one at home the inspector left three notices of violation of air  
22 quality regulations for opening burning. Subsequently two Notices and  
23 Orders of Civil Penalty (Nos. 5048 and 5060) of respondent agency, each  
24 imposing a \$250 penalty, were served on appellant, citing violations of  
25 Regulation I, Article 8, Section 8.02 and 8.05.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

1 VI

2 Appellant had supervised and ignited a large number of outdoor  
3 land clearing fires at the site in the last 30 years. For the past  
4 decade appellant had always obtained fire permits from the Kent Fire  
5 Department prior to causing or allowing outdoor burning on his  
6 property. In this instance appellant had only conversed in general  
7 terms with his occasional employee about a fire permit for the subject  
8 fire.

9 VII

10 After the fire was extinguished, appellant sought and obtained a  
11 fire permit from the Kent Fire Department. He then burned the balance  
12 of the stumps and natural vegetation without incident.

13 VIII

14 Any Conclusion of Law which should be deemed a Finding of Fact is  
15 hereby adopted as such.

16 From these Findings the Board comes to these

17 CONCLUSIONS OF LAW

18 I

19 The Board has jurisdiction over these matters and these persons  
20 under RCW 70.94.740, RCW 43.21B, and PSAPCA Regulation I, Article 3  
21 and Article 8.

22 II

23 Appellant, William G. Burleson through his agent/employee, did  
24 allow an outdoor land clearing fire with some prohibited materials  
25 therein to burn on his property without benefit of a fire permit, in

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

1 violation of respondent's Regulation I, Article 8, Section 8.02(3)  
2 and (5).

3 III

4 The subject fire was a land clearing fire, composed predominantly  
5 of stumps and natural vegetation, as delineated and classified in  
6 Regulation I. Appellant did not violate Regulation I, Article 8,  
7 Section 8.05. Appellant has no record of any prior violation of  
8 respondent's regulations. For these reasons the civil penalties  
9 should be mitigated.

10 IV

11 Any Finding of Fact which should be deemed a Conclusion of Law is  
12 hereby adopted as such.

13 From these Conclusions the Board enters this  
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ORDER

The Notice and Order of Civil Penalty No. 5048 is affirmed, provided however, that \$50 is suspended on condition appellant not violate respondent's regulations for a period of 18 months from the date of appellant's receipt of this Order. Notice and Order of Civil Penalty No. 5060 is hereby vacated.

DONE this 10<sup>th</sup> day of September, 1981.

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE ROTHROCK, Member

  
NAT W. WASHINGTON, Chairman